

taxpayers. In year 1, CFC has general limitation income of 200u and, by year-end, had accrued foreign taxes with respect to that income of 100u when the exchange rate is \$1:1u. In year 1, CFC makes a distribution to P of 50u, half of its earnings and profits of 100u. P is deemed to have paid \$50 of foreign tax with respect to that distribution ( $50u/100u \times \$100$ ). In year 2, after P has filed its United States tax return, CFC pays its actual foreign tax liability of 98.50 when the exchange rate is \$1:1u. Subject to paragraph (d)(4), CFC must reduce its pool of foreign taxes by \$1.50 and increase the corresponding pool of earnings and profits by 1.50u. (The refund is translated into dollars at the rate of exchange prevailing on the date of payment of the foreign tax, and the adjustment to earnings and profits is in "u"s.) In year 2, CFC earns 200u of general limitation income and accrues 120u of tax when the exchange rate is \$1:1u. In year 2, CFC distributes 100u to P. P is deemed to have paid \$128 of foreign tax ( $((\$48.50 + \$120) \times 100u / (51.50u + 80u))$ ). In year 3, after P filed its year 2 United States tax return, CFC pays its actual year 2 tax liability of 100u when the exchange rate is \$1:1u. The Service may require P to recompute its year 2 United States tax liability to account for the effect of the overaccrual of foreign tax pursuant to § 1.905-3T(d)(4)(ii).

(iv) *Deficit in foreign tax pool.* A redetermination of United States tax liability is required if a foreign tax redetermination occurs with respect to foreign taxes deemed paid with respect to a subpart F inclusion or an actual distribution which has the effect of reducing below zero the distributing foreign corporation's pool of foreign taxes in any separate category. Whether a foreign corporation's pool of foreign taxes is reduced below zero shall be determined at the close of the taxable year of the foreign corporation in which the foreign tax redetermination occurred. In no case shall taxes paid or accrued with respect to one separate category be applied to offset a negative balance in any other separate category.

(v) *Example.* The provisions of paragraph (d)(4)(iv) are illustrated by the following example.

*Example.* Controlled foreign corporation (CFC) is a wholly-owned subsidiary of P, a domestic corporation. Both P and CFC are calendar year taxpayers. In year 1, CFC has 200u of general limitation income with respect to which 100 of taxes are paid when the exchange rate was \$1:1u. In year 1, CFC distributes half (50u) of its earnings and profits (100u). Under section 902, P is deemed to have paid \$50 of the foreign taxes paid by CFC

with respect to that distribution ( $50u/100u \times \$100$ ). In year 2, CFC receives a refund of all of its year 1 taxes (100u). In year 2, CFC earns an additional 290u of income—200u of shipping income with respect to which 100u of taxes are paid, and 90u of general limitation income with respect to which 45u of taxes are paid when the exchange rate was \$1:1u. P is required to redetermine its year 1 United States tax liability to account for the foreign tax redetermination occurring in year 2 because, if an adjustment to CFC's pool of general limitation taxes were made, the pool would be <\$5. CFC is not permitted to carry a deficit in any pool of foreign taxes; therefore, P must redetermine its United States liability for year 1.

(e) *Foreign tax imposed on foreign refund.* If the redetermination of foreign tax for a taxable year or years is occasioned by the refund to the taxpayer of taxes paid to a foreign country or possession of the United States and the foreign country or possession imposed tax on the refund, then the amount of the refund shall be considered to be reduced by the amount of any tax described in section 901 imposed by the foreign country or possession of the United States with respect to such refund. In such case, no other credit under section 901, and no deduction under section 164, shall be allowed for any taxable year with respect to such tax imposed on such refund.

(f) *Reduction of corporate level tax on distribution of earnings and profits.* If a United States shareholder of a controlled foreign corporation receives a distribution out of previously taxed earnings and profits and a foreign country has imposed tax on the income of the controlled foreign corporation, which tax is reduced on distribution of the earnings and profits of the corporation, then the United States shareholder shall redetermine its United States tax liability for the year or years affected.

[T.D. 8210, 53 FR 23613, June 23, 1988]

#### § 1.905-4T Notification and redetermination of United States tax liability (temporary).

(a) *Application of this section.* The rules of this section shall apply if, as a result of a foreign tax redetermination as defined in § 1.905-3T(c), a redetermination of United States tax liability is required under § 1.905-3T.

(b) *Notification*—(1) *General rules.* Any United States taxpayer for which a redetermination of United States tax liability is required shall notify the Secretary in the manner described in this paragraph (b), and the Service will redetermine the United States tax liability of the United States taxpayer. Notification shall be made by filing Form 1120X or 1040X, and Form 1118 or 1116, in the manner described in the instructions to Form 1118 with the Service Center where the taxpayer filed the tax return claiming the foreign tax credit to which the notice relates. Notification shall be filed within the time prescribed by and shall contain the information required by this paragraph (b). The amount of tax, if any, due upon a redetermination shall be paid by the taxpayer after notice and demand has been made by the Service. Subchapter B of chapter 63 of the Code (relating to deficiency procedures) shall not apply with respect to the assessment of the amount due upon such redetermination. In accordance with section 905(c) and section 6501(c)(5), the amount of additional tax due shall be assessed and collected without regard to the provisions of section 6401(a) (relating to limitations on assessment and collection). The amount of tax, if any, shown by a redetermination to have been overpaid shall be credited or refunded to the taxpayer in accordance with the provisions of § 301.6511(d)-3.

(2) *Time for filing.* If a redetermination of United States tax liability is necessitated by a foreign tax redetermination that reduced the amount of foreign taxes paid or deemed paid, then the United States taxpayer shall file the notification with respect to such foreign tax redetermination within 180 days after the date the foreign tax redetermination occurs. If a redetermination of United States liability is necessitated by a foreign tax redetermination that increased the amount of foreign taxes paid or deemed paid, then the United States taxpayer claiming foreign tax credits for accrued foreign taxes must notify the Service within the period provided by section 6511(d)(3)(A). Filing of the appropriate notification within the prescribed time shall constitute a claim for the refund of United States tax.

(3) *Notification contents*—(i) *In general.* The taxpayer shall provide the Service with information sufficient to redetermine the tax including, but not limited to the following: the United States taxpayer's name, address, and identifying number; the taxable year or years of the taxpayer that are affected by the redetermination of United States tax liability; information required in paragraph (b) (ii) and (iii) below the respect to foreign tax redeterminations affecting the redetermination of United States tax liability, including information in a form that will enable the Service to verify and compare the original computations with respect to a claimed foreign tax credit, the revised computations resulting from the foreign tax redeterminations, and the net changes resulting therefrom.

(ii) *Direct foreign tax credit.* In the case of foreign taxes paid by or on behalf of the taxpayer, if—

(A) The taxpayer receives a refund of foreign tax, the taxpayer's information shall include: the amount of foreign taxes paid in foreign currency; the date or dates the foreign taxes were paid; the rate of exchange on each date the foreign taxes were paid; the amount of the foreign taxes refunded in foreign currency;

(B) The foreign taxes when paid differ from the accrued amounts claimed as credits by the taxpayer because of fluctuation in the value of the foreign currency in which the foreign taxes were paid, the taxpayer's information shall include the following: the date on which foreign taxes were accrued and the dates on which the foreign taxes were paid; the rates of exchange for each such date; and the amount of foreign taxes accrued or paid in foreign currency on each such date;

(C) The foreign taxes when paid differ from accrued amounts claimed as credits by the taxpayer because the taxpayer is assessed additional or less foreign tax, the taxpayer's information shall include the following: the original amounts and information described in subdivision (B) of this paragraph (b)(3)(ii); the amount of additional or reduced foreign tax in foreign currency; and the revised amounts and information described in subdivision (B) of this paragraph (b)(3)(ii).

(iii) *Foreign taxes deemed paid.* In the case of foreign taxes paid or accrued by a foreign corporation that are deemed paid or accrued under section 902 or section 960 and with respect to which the taxpayer is required to redetermine its United States tax liability, the United States taxpayer's information shall include the following: the foreign corporation's name and identifying number (if any); the dates and amounts of any dividend distributions or other inclusions made out of earnings and profits for the affected year or years; and the amount of earnings and profits from which such dividends were paid for the affected year or years; and information described in paragraph (b)(3)(ii) as applied to the foreign corporation. In the case of a failure to attach the required notification or to make the required adjustments described in § 1.905-3T(d)(2)(iii), the taxpayer's information shall also include a complete factual description justifying that failure.

(c) *Interest and penalty*—(1) *General rules.* If a foreign tax redetermination results in a redetermination of United States tax liability, then interest shall be computed on the deficiency or overpayment in accordance with sections 6601 and 6611 and the regulations thereunder. No interest shall be assessed or collected on any deficiency resulting from a refund of foreign tax for any period before the receipt of the refund, except to the extent interest was paid by the foreign country or possession of the United States on the refund for the period. In no case, however, shall interest assessed and collected pursuant to the preceding sentence for any period before receipt of the refund exceed the amount that otherwise would have been assessed and collected under section 6601 and the regulations thereunder for that period. Interest shall be assessed from the time the taxpayer (or the foreign corporation of which the taxpayer is a shareholder) receives a refund until the taxpayer pays the additional tax due the United States.

(2) *No interest on adjustments to pools of foreign taxes.* A deficiency or overpayment of United States tax liability does not result from a redetermination of foreign tax unless a redetermination of United States liability is required.

Consequently, no interest will be paid by or to a United States corporation as a result of adjustments by a foreign corporation to its pools of foreign taxes and earnings and profits under paragraph (d)(2) of § 1.905-3T.

(3) *Imposition of penalty.* Failure to comply with the provisions of this section shall subject the taxpayer to the penalty provisions of section 6689 and the regulations thereunder.

(d) *Effective date.* The provisions of this section apply to foreign tax redeterminations described in § 1.905-3T(a). Notwithstanding paragraph (b)(2) of this section (relating to time for filing the required notice), the taxpayer shall have 180 days after the publication of an Announcement in the Internal Revenue Bulletin notifying taxpayers of the availability of the Forms and instructions to comply with the provisions of this section. In no case, however, shall this paragraph (d) operate to extend the statute of limitations provided by section 6511(d)(3)(A).

[T.D. 8210, 53 FR 23617, June 23, 1988]

**§ 1.905-5T Foreign tax redeterminations and currency translation rules for foreign tax redeterminations occurring in taxable years beginning prior to January 1, 1987 (temporary).**

(a) *In general.* This section sets forth rules governing the application of section 905(c) to foreign tax redeterminations occurring prior to January 1, 1987. However, the rules of this section also apply to foreign tax redeterminations occurring after December 31, 1986 with respect to foreign tax deemed paid under section 902 or section 960 with respect to earnings and profits accumulated in taxable years of a foreign corporation beginning prior to January 1, 1987.

(b) *Currency translation rules*—(1) *Foreign taxes paid by the taxpayer and certain foreign taxes deemed paid.* Foreign taxes paid in foreign currency that are paid by or on behalf of a taxpayer or deemed paid under section 960 (or under section 902 in a deemed distribution under section 1248) shall be translated into dollars at the rate of exchange for the date of the payment of the foreign tax. Refunds of such taxes shall be